IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.997 OF 1988

Goswami Shri Vallabhalalji Dwarkesh Lalji
Maharaj, in his personal capacity as well as
Manager and Karta of Hindu Undivided Family
since deceased by his heirs,
Shri Harish Vallabhdas Goswami alias
Vithalnathji Goswami alias Lalmaniji
Goswami. ...Petitioner

Vs.

Brij Mohan Kanodia since deceased by LRs
Govind Prasad Kanodia & Ors. ...Respondents.

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Ms. P.D. Ankalesaria, Senior Advocate with Mrs. S. V. Bharucha for the Petitioner.
Mr. Firdosh Pooniwala with Ms.Sheetal S. Shah i/b. Mehta & Girdharilal for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

October 19, 2006.

ORAL JUDGMENT :

The Appellate Bench of the Court of Small Causes at Mumbai by its Judgment and Order dated 6th November 1987 allowed an appeal against the judgment of the Trial Judge by which a suit for eviction instituted by the Petitioner in 1968 was decreed on 11th August 1976. The judgment in appeal of the Court of Small Causes reversing the decree for eviction is called into

question in these proceedings under Article 227 of the Constitution.

2. By an Indenture of Lease dated 16th June 1927, the then Trustees of the City of Bombay granted a lease for a period of 999 years in respect of a plot of land admeasuring 6981 sq. yards at Naigaum within the City of Bombay to the father of the Petitioner. The lease came into effect from 30th November 1922. The Petitioner's father constructed three buildings consisting of a ground and a first floor on a portion of the land that was leased, leaving an open space admeasuring 3975 sq.yards. On 13th May 1967, a sub lease was executed by the Petitioner in favour of the First Respondent of the entire land admeasuring 6981 sq. yards together with the three buildings that had been constructed thereon for a period of 98 years commencing from 1st April 1967. The First Respondent was permitted under the terms of the sub-lease to develop the open plot of land by constructing a multi-storeyed structure thereon. Clause 2 of the document by which a sub-lease was created stipulated conditions which were required to be performed by the First Respondent as sub-lessee to the intent that such covenants and obligations shall run with the land.

Among them were obligations (i) To pay a monthly rent of Rs.6,021/-; (ii) To pay all existing and future Municipal taxes; (iii) To insure the property for a sum at least of Rs.2,50,000/- in the name of the Petitioner's father and pay premium thereon; and (iv) To maintain the property in good repair and condition. Under the terms of the sub-lease, the First Respondent was permitted to develop the land inter alia by the construction of additional structures thereon and to renovate the three structures which existed on the land. The First Respondent was not permitted to underlease, transfer or part with the interest in the demised premises without the consent of the Petitioner subject to the condition that such consent shall not be unreasonably withheld. However, the said consent was not necessary in the event of an assignment by the sub-lessee of his entire interest in favour of a Co-operative Housing Society. On the expiry or sooner determination of the term of the sub-lease, the First Respondent was required to give up the demised premises together with all buildings erected and standing thereon without claiming any compensation, right or consideration. Under clause 4(e), a right of re-entry was reserved to the Petitioner if and whenever there was a breach of any of the covenants on the part of the First

Respondent and in the event that the First Respondent did not make good such breach within a reasonable time after notice in that behalf.

3. In terms of the requirements contained in the document of sub-lease, the Petitioner by a letter dated 13th May 1967 consented to the First Respondent granting an under lease of the property or assigning the property to the Second and Third Respondents subject to the covenants contained in the Indenture of sub-lease. An agreement to under lease is stated to have been entered into by the First Respondent, described as sub-lessor with the Second and Third Respondents described as sub-lessees to develop the land in accordance with the provisions of the lease dated 13th May 1967 and the head lease dated 16th June 1927 entered into with the Municipal Corporation. The aforesaid document between the First Respondent and the Second and Third Respondents was not properly stamped and was not admitted in evidence.

4. According to the Petitioner, the First Respondent fell into arrears of rent since 1st June 1967 upon the initial payment of

rent for a period of two months. On 8th December 1967, the Petitioner addressed a notice of demand to the First Respondent recording that no rent had been paid for the period from 1st June 1967 till 30th November 1967. A demand was made for the arrears then totalling to Rs.36,126/-. The First Respondent by his reply dated 19th February 1968 contended that the Petitioner was aware that he had under leased the premises to M/s. Chudiwala & Co. with the consent of the Petitioner and that the aforesaid firm had been authorised to realise and collect the rent from the tenants on the property. The reply of the First Respondent called upon the Petitioner to contact the assignee for payment of the rent. On 28th March 1968, the Petitioner addressed a letter to the First Respondent recording that the rent was in arrears; the total amount outstanding being Rs.54,189/- from 1st June 1967 till 29th February 1968. The First Respondent, it was also alleged, had failed to pay Municipal taxes due from 1st April 1964 and to insure the property in the name of the Petitioner. The Petitioner stated that upon the failure of the First Respondent to make the payment of the arrears of rent, the Petitioner was entitled to forfeit the lease and accordingly the lease would stand forfeited on receipt of the letter entitling the Petitioner to enter upon the demised premises.

The letter also contained a notice of demand for the arrears of rent. The Petitioner stated that the rent was due and payable by the First Respondent under the terms of the lease and the Petitioner was not bound to look to the Second Respondent for the payment of the rent. On 22nd May 1968, the Second Respondent as a partner of Chudiwala & Co. addressed a reply to the letter of forfeiture dated 28th March 1968. The Second Respondent set up a defence that as regards the rent, it had been agreed between the Petitioner and the First Respondent that an application for fixation of standard rent will be jointly made to the Court of Small Causes and that the standard rent fixed by the Court would be considered as the proper and legitimate rent for the plot of land. According to the Second Respondent, it was the Petitioner who had not taken any steps towards the fixation of standard rent. The Second Respondent stated that he was ready and willing to pay the Municipal taxes as and when they were demanded. A copy of an Insurance Policy dated 15th May 1968 was purported to be forwarded. However, it is common ground, that the Insurance Policy was remitted under cover of a letter dated 9th August 1968.

5. On 28th November 1968, the Petitioner instituted a suit for eviction against the Respondents on several grounds including arrears of rent, unlawful subletting, profiteering and the commission of an act in breach of Section 108(o) of the Transfer of Property Act, 1882. The Petitioner claimed a declaration of ownership in respect of the multi storeyed building that had been put up on the plot of land by the Second and Third Respondents. Sometime in the year 1969, the First Respondent filed an application for fixation of standard rent (Application 686/SR of 1969) in which an interim standard rent of Rs.3,500/- was fixed. The Petitioner challenged the order of the Trial Judge in a Civil Revision Application in which on 12th March 1974, it was directed that the standard rent application and the suit for ejectment be disposed of together. The Trial Judge decreed the suit for eviction on 12th August 1976 and directed the Respondents to deliver possession of the suit premises along with the structures standing thereon. The Trial Court fixed the standard rent of the premises at Rs.6,021/- per month and accordingly passed a money decree in the amount of Rs.1,02,357/-.

6. The Respondents preferred an appeal against the

decree for eviction. During the pendency of the appeal, the Respondents took out a Motion for stay of the decree of the Trial Court. On 4th October 1977, the Appellate Court stayed the execution of the decree but ordered the Respondents to deposit the rent at the rate of Rs.6,021/- per month. The Respondents were unsuccessful in challenging the order of the Appellate Court in writ proceedings (Special Civil Application 2712 of 1977) instituted before this Court. The matter was carried in appeal to the Supreme Court and on 25th September 1978, the Supreme Court while dismissing the Special Leave Petition, directed that the decree of the Trial Court be stayed on condition that (i) The Respondents shall deposit with the Appellate Bench of the Court of Small Causes a sum of Rs.3,88,356/- being the amount of arrears of rent calculated at the rate of Rs.6,021/- per month upto 30th September 1978 in two instalments, half of which was to be deposited within a period of four months and the balance within a period of four months thereafter; (ii) The Respondents shall continue to deposit the compensation at the rate of Rs.6,021/- per month on or before 15th day of each month.

7. The order passed by the Supreme Court was complied

with. The decree for eviction was executed on 8th January 1980. From an affidavit filed by the Constituted Attorney for the Petitioner in September 1988, it appears that the decree was executed by giving actual possession of the three old buildings constructed by the Petitioner together with symbolic possession of the outer part of the property on which the Second and Third Respondents had put up a multi storeyed building and parted with the possession thereof to various flat holders on an ownership basis.

8. The Appellate Bench of the Court of Small Causes allowed the appeal against the decree for eviction on 6th November 1987. This petition was instituted to challenge the order of the Appellate Bench. During the pendency of the petition, the original Plaintiff expired and the name of the Petitioner was brought on the record.

9. The Trial Court had decreed the suit inter alia on the ground of default in the payment of rent. The defence to the ground of arrears was that the Second Respondent (the Second Defendant to the suit) had paid a sum of Rs.1 lakh to the original Plaintiff as deposit to be held by the Plaintiff until the standard rent

in respect of the premises in question was fixed by the Court and the amount was to be adjusted against the rent thereafter. Now it is an admitted position that the Second Defendant had paid an amount of Rs.1 lakhs to the Plaintiff. The Plaintiff's Constituted Attorney, J.J. Mundra, stated that the Plaintiff had informed him that an amount of Rs.1 lakh had been paid by the Second Defendant, but that it was, according to the Plaintiff, by way of a loan. In the course of the cross-examination, the witness was asked as to whether the Plaintiff had paid any interest on the amount of Rs.1 lakh, if it was a loan as alleged, to which he answered by stating that he was unaware as to whether interest was paid. The Plaintiff himself stepped into the witness box claiming that the amount of Rs.1 lakh was by way of a loan. However, no details of the alleged loan were forthcoming from the Plaintiff and in fact, in the course of the cross-examination, he made the following admissions:

> “I do not know the purpose for which the loan was taken. Gokaldas or Mundra may be in a position to tell the purpose. The cheque for repayment was signed by me. I do not know whether any interest was paid on this loan. It may be that interest was not paid.”

No details whatsoever of the loan were forthcoming. The Second Defendant who stepped into the witness box deposed that the

lease was executed on 13th May 1967. The building had come upto the level of the first floor. According to the Second Defendant, there was an oral understanding that the standard rent would be got fixed from the Court and that in the meanwhile an amount of Rs.1 lakh should be deposited with the Plaintiff on 13th May 1967. A cheque for that amount was handed over on 13th May 1967 to the Plaintiff which was encashed on 15th May 1967. The Second Defendant stated that in November 1968, the Plaintiff returned the amount of Rs.1 lakh and when the Constituted Attorney of the Plaintiff was contacted, he stated that the Plaintiff was not prepared to abide by the understanding about getting the standard rent fixed through the Court. In the course of the cross-examination, the Second Defendant explained that the receipts showed that the amount of Rs.1 lakh was paid as “Khate Pethe” which meant 'on account'.

10. On the background of this evidence, oral and documentary, the following circumstances would merit emphasis:

-(i) In the contemporaneous correspondence that was exchanged between the parties, the Second Defendant in his letter

dated 22nd May 1968 specifically adverted to the agreement between the First Defendant and the Plaintiff for moving an application for fixation of standard rent before the Court of Small Causes. There was no denial of such an agreement in the reply dated 24th May 1968 that was forwarded on behalf of the Plaintiff by their Advocates;

-(ii) It is an admitted fact that an amount of Rs.1 lakh was in fact, paid to the Plaintiff by a cheque on 13th May 1967. The Plaintiff returned the amount on 4th November 1968 and immediately thereafter instituted a suit for eviction on 20th November 1968;

(iii) Though the contention of the Petitioner was that the moneys that were received by the Plaintiff from the Second Defendant were by way of loan, neither the original Plaintiff nor his Constituted Attorney were able to explain in the witness box (a) the purpose of the loan; (b) the sudden return of the moneys immediately prior to the institution of the suit; and (c) the absence of any interest being paid on the amount if it was a loan.

11. The suit was instituted immediately after the Plaintiff returned the amount of Rs.1 lakh. The Appellate Bench of the Court of Small Causes has noted firstly that though the Second and Third Defendants had in reply to the notice of demand dated 28th March 1968 specifically adverted to the agreement between the parties to move the Court of Small Causes for the fixation of standard rent, there was no denial thereof in the reply submitted to the Second and Third Defendants by the Advocates of the Plaintiff. Secondly, after the Plaintiff received a reply to the notice of demand on 22nd May 1968, the suit was instituted on 20th November 1968. In the meantime, on 4th November 1968, an amount of Rs.1 lakh was returned by the Plaintiff to the Second and Third Defendants. The lease in the present case was for a duration of 98 years. The Second and Third Defendants had erected a multi storeyed building on the land by investing an amount of Rs.8 crores and in the background of the overall evidence, the Appellate Bench found it inconceivable that the rental payment of Rs.6021/- per month would not have been paid.

12. The finding that has been arrived at by the Appellate Bench is a possible view to take on the evidence which has

emerged from the record. The admitted receipt of an amount of Rs.1 lakh by the Plaintiff on 13th May 1967; the non-denial of the agreement between the parties to move an application for fixation of standard rent; return of the amount of Rs.1 lakh immediately before the suit was instituted; and the inability of the Plaintiff to explain any details relating to the purpose of the alleged loan or the interest payable are important circumstances, on the basis of which an adverse inference has justifiably been drawn against the Plaintiff. The Plaintiff had obviously held on to a deposit of one lakh at the material time.

13. That next question is to whether the Second and Third Defendants to the suit were independently, in their own right, entitled to protection as sub-tenants. Now, it is an admitted position that on 13th May 1967, the original Plaintiff had addressed a letter to the First Defendant consenting to his granting an underlease of the property or assigning the property to the Second and Third Defendants subject to the covenants and conditions in the indenture of sublease. The plea that was set up by the original Plaintiff in paragraph 13 of the plaint was that the Second and Third Defendants had no independent right to remain on the suit

premises and the underlease in their favour came to an end upon the forfeiture of sublease dated 13th May 1967. In paragraph 16 of the plaint, the original Plaintiff specifically admitted that the "Second and Third Defendants are sub-tenants of the First Defendant". At this stage, it would be material to note that before the Trial Court, it was the specific contention of the Plaintiff that the agreement between the First Defendant and the Second and Third Defendants was an agreement of lease accompanied by a present demise. The Trial Court noted in paragraph 27 of its judgment that it was not in dispute that the Second and Third Defendants were underlessees and that subletting to them was with the consent of the original Plaintiff. This being the position, the plain consequence thereof would be that even if the tenancy of the First Defendant was validly terminated, the Second and Third Defendants in whose favour a sub-tenancy had been created in 1967 became tenants of the Plaintiff under Section 15(2) of the Bombay Rents, Hotel and Lodging Rates (Control) Act, 1947 as amended. The judgment of the Trial Court was delivered on 12th August 1976. The Appellate Bench of the Court of Small Causes decided the matter in appeal on 6th November 1987. Section 15 of the Act provides as follows :

“15. [In absence of contract to the contrary, tenant not to sub-let or transfer] [or to give on licence]

-(1) Notwithstanding anything contained in any law but to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging Rates (Control) (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises:

Provided that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases or the giving on licence any premises or class of premises and to such extent as may be specified in the notification.

-(2) The prohibition against the sub-letting of the whole or any part of the premises which have been let to any tenant, and against the assignment or transfer in any other manner of the interest of the tenant therein, contained in sub-section (1), shall, subject to the provisions of this sub-section be deemed to have had no effect before the 1st day of February 1973, in any area in which this Act was in operation before such commencement; and accordingly, notwithstanding anything contained in any contract or in the judgment, decree or order a Court, any such sub-lease, assignment or transfer in favour of any person who has entered into possession, despite the prohibition in sub-section (1) as purported sub-lessee, assignee or transferee and has continued in a possession on the date aforesaid shall be deemed to be valid and effectual for all purposes, and any tenant who has sub-let any premises or part thereof, assigned or transferred any interest therein, shall not be liable to eviction under clause (e) of sub-section (1) of section 13.

The provisions aforesaid of this sub-section

> shall not affect in any manner the operation of sub-section (1) after the date aforesaid."

The definition of the expression "tenant" in Section 5(11) was amended by the Maharashtra Act 18 of 1987 so as to include such sub-tenants and other persons as have derived title under a tenant before 1st February 1973. The effect of the amended provision was construed in a judgment of a Learned Single Judge of this Court in **Lakichand Punamchand Marwadi v. Thakursheth Lalasaheb Tokeram**.[1] Mr.Justice R.A. Jahagirdar held thus:

> "The sum total of the effect of these amendments was to legalise all sub-tenancies which had been created against the prohibition before 1st of February, 1973. If, therefore, a sub-tenancy had been created before 1st of February, 1973, it would not be an illegal subletting and, therefore, would not be a ground for eviction of the tenant under Section 13(1)(e) of the Bombay Rent Act."

Construing the provisions of Amending Act 18 of 1987, it was observed as follows:

> "The language of the Amending Act in its various sections leaves one in no doubt that notwithstanding the fact that a cause of action has arisen on any day, all sub-tenancies created despite the prohibition before 1st of February, 1973 stood legalised. No other meaning, according to me, is possible. Further, in view of the language contained in Section 25 of the Amending act, it

1 AIR 1991 Bombay 207

> is clear that irrespective of the date on which the suit was filed, if the suit or proceeding as mentioned in Section 25 of the Amending Act is pending, then the illegality attaching to a sub-tenancy created before 1st of February, 1973 stands removed by virtue of the provisions contained in, Maharashtra Act No.18 of 1987."

Thus, in my view, there is merit in the submission which has been urged on behalf of the Second and Third Respondents that irrespective of whether the tenancy of the First Respondent was validly determined, the Second and Third Defendants became entitled to the protection of Section 15(2) of the Rent Act. The Plaintiff has in his own pleadings admitted that there was a sub tenancy in favour of the Second and Third Defendants. The subtenancy was created in 1967. This was before the date of 1st February 1973 fixed the statute. The Second and Third Defendants were consequently entitled to protection.

14. In **Haji Suleman Haji Ayub Bhiwandiwala vs. Narayan Sadashiv Ogale**,[2] the Supreme Court has held that Sections 12 and 13 of the Rent Act cover different objects: Section 12(1) confers statutory protection on a tenant so long as he performs the conditions of tenancy. Section 13 on the other hand provides that

2 54 BLR 122

notwithstanding such protection, the landlord can sue for eviction, provided he establishes any one of the circumstances set out therein. The Supreme Court consequently held that Sections 12 and 13 "seek a compromise between the necessities of tenants and landlords". Hence, it is impossible to state that it is only when circumstances set out in Section 13 arise that a landlord can evict a tenant and that eviction on the ground of failure to perform the conditions of tenancy would not deprive the tenant of the protection under Section 12(1). In other words, a tenant is bound to perform the conditions of tenancy in order to obtain the continuing benefits of Section 12(1). In **Merwanji vs. Union of India**,[3] the Supreme Court held that where the lessee covenants with the lessor under the terms of lease that he will keep the premises in as good a condition as the same were in when the lease was executed, except for reasonable wear and tear and that he would surrender them upon the determination of the tenancy, it could not be said that the term merely amounted to a covenant for careful and reasonable use of the property on the part of the tenant and nothing more. A covenant of this type, the Supreme Court held, has been construed by judicial decisions as casting a duty on the

3 AIR 1979 SC 1309

tenant to prevent permissive waste by carrying out such repairs as are necessary to keep and maintain the property in good condition and tenantable repair and to restore the property to the landlord upon the end of the term. In **Patel Chandulal Trikamlal vs. Rabri Prabhat Harji**,[4] a condition in a rent note provided a restraint against using the land lying beyond the demarcated limits for grazing of cattle. The Supreme Court held that this was not just a personal obligation cast on the tenant but related to the manner in which the demised land was to be used. A breach of the obligation would, therefore, amount to a breach of the tenancy. In this background, the argument that there was a breach of the conditions of tenancy will merit consideration.

15. In so far as the ground relating to the payment of Municipal taxes is concerned, the Trial Judge held against the Plaintiff on Issue 4. The Appellate Bench noted that no cross-objection had been filed under Order 41 Rule 22, but nonetheless even on merits, the finding was correct. The Plaintiff, it has been held, was liable to pay the arrears of tax for the period from 1965 till March 1967 as the lease of the First Defendant dated 13th May

4 AIR 1996 SC 532

1967 was to come into effect from 1st April 1967. The liability of the Defendants to pay the arrears of taxes was to take effect from 1st April 1967. The Plaintiff expected the Defendants to pay even the prior arrears of taxes. As a result, the third party flat purchasers in the multi storeyed building had to suffer disconnection of water supply due to non-payment of property taxes inter alia by the Plaintiff for the period ending March 1967. This finding has not been shown to suffer from any error apparent as to warrant interference in the exercise of the extraordinary jurisdiction under Article 227 of the Constitution.

16. In so far as the question of repairs is concerned, the findings that have been arrived at in paras 23 and 24 of the judgment of the Appellate Bench of the Court of Small Causes would not warrant interference under Article 227 of the Constitution. Significantly, no notice was given by the Plaintiff under clause 4(c) of the Lease and even in the notice dated 28th March 1968, the Plaintiff was silent on the question of repairs. In this view of the matter, the finding does not warrant interference.

17. In so far as the ground relating to the failure to insure the

property is concerned, it would be material to advert to Section 114A of the Transfer of Property Act, 1882 which provides as follows :

> "114A. Relief against forfeiture in certain other cases.- Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing -
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> (a) specifying the particular breach complained of; and
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> (b) if the breach is capable of remedy, requiring the lessee to remedy the breach,and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.
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> Nothing in this Section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

In the present case, clause 4(e) of the Lease Deed dated 13th May 1967 provided as follows :

> "(e) If and whenever there shall be a breach of any of the covenants on the part of the Sub-Lessee herein contained and the Sub-Lessee does not make good such breach within reasonable time after notice in that behalf from the Sub-Lessor, the Sub-Lessor may re-enter upon the premises or any part of the said premises in the name of the whole and immediately thereupon the demise and all rights of the Sub-Lessee hereunder shall absolutely determine."

In the present case, the notice dated 28th March 1968 issued by the Plaintiff, furnished no opportunity to remedy the breach. It would be material to note that on 9th August 1968, a copy of an Insurance Policy was forwarded to the Plaintiff''s Advocate on behalf of the Second Defendant. That apart, in **West End Hotel Pvt.Ltd. vs. Manu Subedar,**[5] a Learned Single Judge of this Court has held that an obligation cast on lessee to pay the premium on account of Insurance was contrary to the provisions of Section 18 (1) of the Rent Act. This has been reiterated in **Mary D' Souza vs. Domnic John D'Souza**.[6]

18. In sum and substance therefore, the Appellate Bench of the Court of Small Causes has reversed the decree for eviction on cogent grounds. The ground of default in the payment of rent by

5 75 BLR 228
6 84 BLR 89

the First Defendant has not been established. In any event, the Second and Third Defendants are independently entitled to the protection of Section 15 of the Bombay Rent Act as amended in 1987.

19. On behalf of the Petitioner, it has been submitted that the decree for eviction was stayed subject to the observance of certain conditions and that on the failure of the Defendants to comply with the order passed by the Supreme Court on 25th September 1978, the decree was executed on 8th January 1980. In view of the well settled position in law, the execution of the decree on account of the failure of the Appellant before the Court of Small Causes to comply with the conditions subject to which the execution of the decree was stayed, did not preclude the Appellate Bench from considering the correctness of the decree when the substantive appeal came up for hearing and final disposal. Upon the Court of Small Causes coming to the conclusion that the Appellants were justified in their challenge to the decree for eviction and upon the decree for eviction being set aside, the successful Appellants would be entitled to restitution under Section 144 of the Code of Civil Procedure, 1908. At the same time, any order of restitution

will have to be made subject to the condition that the successful Appellants before the Appellate Bench must pay all the arrears of rent upto the date on which the decree for eviction was executed together with interest at such rate as the Court may consider it appropriate to fix. Counsel appearing on behalf of the Respondents has stated before the Court that the total arrears for the period of 153 months between 1st April 1967 until December 1979 amounted to Rs.9,21,213/-. An amount of Rs.4,42,543/- was paid leaving a balance of Rs.4,78,674/-. Before restitution can be ordered in favour of the Respondents consequent upon the decree for eviction being set aside, it would be necessary to order and direct that the Respondents shall pay the aforesaid amount together with simple interest at the rate of 9% p.a. within eight weeks from today. The Respondents cannot be allowed restitution unless the amount which was outstanding upto the date on which the decree for eviction was executed, pending appeal, is duly paid. Interest at the rate of 9% p.a. would be a reasonable rate of interest having regard to the circumstances as they prevailed at the material point of time. In the circumstances, while confirming the judgment and order of the Appellate Bench of the Court of Small Causes, this petition shall stand disposed of in the light of the

aforesaid directions. In the circumstances of the case, there shall be no order as to costs.

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